* IN THE HIGH COURT OF DELHI AT NEW DELHI

% Date of Decision: February 20, 2007

\+ W.P.(C).No.9327/2006

M/s.Nawab Consultants for Ideas ..... PETITIONER
Through: Mr.N.K.Kaul, Sr.Advocate with
Ms.Shobna Takiar, Advocate.

Versus

Govt.of NCT of Delhi & Others .... RESPONDENTS
Through: Mr.J.R.Midha and Mr.Ashish Gupta,
Advocates.

**CORAM:**
**HON'BLE MR. JUSTICE ANIL KUMAR**

1. Whether reporters of Local papers may be allowed to see the judgment? YES
2. To be referred to the reporter or not ? YES
3. Whether the judgment should be reported in the Digest? YES

**Anil Kumar, J.**

1. The main dispute in this writ petition is whether the petitioner was awarded the contract for supply of Godrej chairs or chairs equivalent to Godrej chairs. The allegation of the petitioner is that he was awarded contract for supply of chairs equivalent to Godrej and consequently on supplying the chairs equivalent to Godrej his EMD could not be forfeited by letter dated 8.5.2006 nor the agreement could be rescinded by rejection letter dated 12.5.2006 and in the circumstances the petitioner has prayed that the respondents be directed to recall the tender permit and petitioner

be allowed to participate in the fresh tender.

2. Brief facts to comprehend the controversies between the parties are that the petitioner is a sole proprietorship firm of Sh.Subhash Ahuja who is in the business of manufacturing furniture of all kinds and he is alleged to have a pool of talented artisans with expertise in the area of manufacturing furniture and he has successfully completed various projects since he started his business.

3. Respondent vide public notice dated 29.3.2006 invited item rate tenders from the enlisted contractor of CPWD, Class I, Furniture category contractor or specialized agencies having adequate experience in furniture. The tender was invited for providing movable furniture for Judge's library cum lounge, Judge's conference room, canteen, bar room and three branches etc. in District Courts of Rohini, Delhi.

4. The tender for work for providing movable property was to be submitted by 16 hours on 21st April, 2006 to Executive Engineer, PWD, Civil Division-II, DCE(P), PWD, Bawana Road, Delhi. The estimated cost of the work was Rs.96,15,673/- and earnest money was Rs.1,92,313/- and the tenderer was liable to give performance guarantee equivalent to 5% of the tender value and security deposit equal to 5% of the tender value. The time allowed for carrying out the work was 3 months from the 10th day after the date of issue of letter of acceptance of tender or from 1st day of handing over the site whichever was later. The tender form had conditions of work for execution. Some of the relevant terms are as follows:-

"1.5:- In the event of any difference or discrepancy in the description of any item or its specifications, the same shall be resolved in the following sequence and decision of the Engineer-in Charge shall be conclusive, final and binding on the contractor:-

a) The nomenclature of the item shall take precedence over all and anything stated elsewhere.

b) The conditions and specifications attached to the tender document shall take preference over the provisions of CPWD specification 1996 (Vol. 1 to VI) with upto date correction slip and relevant IS codes.

c) The CPWD specification 1996 Vol.1 to VI shall take precedence over provisions of relevant IS Codes.

d) In case, it is not possible to resolve the dispute with the help of tender documents the provision of relevant IS codes shall be relied upon.

e) In case, it is not possible to resolve the dispute with the help of any of the above documents, the decision and direction of the Engineer-in-Charge shall be followed for execution and completion of any item of work."

5. The general specifications of the tender provided for Chair. The `Chair' was defined under clause 16 as under:-

"16: Chair

Chair shall be steel chairs manufactured from approved manufacturer as per their specification and as approved by the Engineer-in-Charge. The seat shall have interwoven waving with 12 mm thick ply, unless otherwise indicated, seats shall be with 75 mm thick heavy duty fire retardant foam and back shall be with 40 mm thick heavy duty fire retardant foam upholstered on both sides."

6. The document also had a list of approved make or material and item 19 described revolving chair and its make was specified as Godrej or equivalent which is as under:-

| Sr.No. | MATERIAL | MAKE |
|---|---|---|
| 19 | REVOLVING CHAIR | GODREJ OR EQUIVALENT |

7. The schedule of quantities were also given along with the tender which categorically stipulated for supply of chair as under:-

| *42* | *Supplying and placing chairs of required size and shade as per direction of Engineer-in-Charge* | *Qty* | *Rate* | *Unit* | *Amount* |
|---|---|---|---|---|---|
| | (a) Godrej revolving chair, ULTIMA PCH-9101R for PP Chamber | 2 | | Each | |
| | (b) Godrej Chair 'STAQ' 4012 XW Shape as per manufacturer MPC-101 for canteen | 168 | | Each | |
| | (c) Godrej Chair 'STAQ 4002 XW for canteen | 36 | | Each | |
| | (d) Godrej revolving chair 'ULTIMA PCH-9102 R for PP Chamber | 40 | | Each | |
| | (e) Godrej Chair 'SYPDER' 9602 A mesh fabric for training room | 70 | | Each | |
| | (f) Godrej revolving chair 'HALO' PCH 9200 R for conference hall | 5 | | Each | |
| | (g) Godrej revolving chair “HALO' PCH 9201 R for conference hall | 122 | | Each | |
| | (h)Godrej Chair ' Preimum Executive' PCH 7003 for PP Chamber | 88 | | Each | |

8. The tender document also provided specification for super premium chairs. The specification for super premium chairs was also categorically provided for Godrej PCH-9200R/9201R. The specifications for Synchro chair Godrej, Premium Executive chair Godrej PCH-7003, STAQ chairs PCH-4012XW, Godrej PCH-9602A, Godrej JT 104 and Godrej JT 9 were also provided in detail. On receiving the

tender the petitioner categorically filled in schedule of quantities, the rates offered by him which are as under:-

| *42* | *Supplying and placing chairs of required size and shade as per direction of Engineer-in-Charge* | *Qty* | *Rate in Rs.* | *Unit* | *Amount in Rs.* |
|---|---|---|---|---|---|
| | (a) Godrej revolving chair, ULTIMA PCH-9101R for PP Chamber | 2 | 10990.80/- | Each | 21981.60/- |
| | (b) Godrej Chair 'STAQ' 4012 XW Shape as per manufacturer MPC-101 for canteen | 168 | 1788.3/- | Each | 300434.4 |
| | (c) Godrej Chair 'STAQ 4002 XW for canteen | 36 | 2314/- | Each | 83304/- |
| | (d) Godrej revolving chair 'ULTIMA PCH-9102 R for PP Chamber | 40 | 10465/- | Each | 418600/- |
| | (e) Godrej Chair 'SYPDER' 9602 A mesh fabric for training room | 70 | 6784/- | Each | 474880/- |
| | (f) Godrej revolving chair 'HALO' PCH 9200 R for conference hall | 5 | 24190/- | Each | 120950/- |
| | (g) Godrej revolving chair “HALO' PCH 9201 R for conference hall | 122 | 23663/- | Each | 2886886/- |
| | (h) Godrej chair “PREMIUM EXECUTIVE' PCH 7003 for PP Chamber | 88 | 4101/- | Each | 360888/- |

9. The tender of the petitioner was accepted by letter dated 28.4.2006. the tender of the petitioner for an amount of Rs.7386277 was lower than the estimated cost of Rs.9615673. The petitioner along with the acceptance letter was requested to submit performance guarantee of Rs.369314/- within 15 days of issue of the acceptance letter in the prescribed form and the time for supply of the material was reckoned three months after 22 days from the date of issue of the letter.

10. The petitioner supplied the chairs by a delivery challan dated 29.4.2006, however, in the delivery challan instead of Godrej chairs he mentioned about supply of chairs equivalent to various models of `Godrej' chairs stipulated in the tender and not of make `Godrej.

11. The respondents communicated to the petitioner by letter dated 8.5.2006 that in the nomenclature of item No.42 for chairs, Godrej chairs of particular make, being revolving chairs only had been mentioned and therefore, the petitioner has to supply the revolving chairs as mentioned in the nomenclature of item No.42 of make `Godrej'. It was also intimated to the petitioner that nomenclature of the item will prevail and, therefore, the petitioner has to supply the particular make of Godrej revolving chairs only and not its equivalent.

12. The petitioner responded to letter dated 8.5.2006 by his reply dated 11.5.2006 and categorically admitted that though in the nomenclature it was mentioned only Godrej make but since the nomenclature is a part of the contract and the most important portion is the approved list so the petitioner was misled in the process and the petitioner had quoted only on account of his ability to compete in the system. The relevant portion of the petitioner's communication dated 11.5.2006 is as under:-

> "Though in the Nomenclature it was mentioned only Godrej make since the Nomenclature is a part of the contract and the most important portion is approved List so we are misled in the process. We have quoted only on account of our ability to compete in the system.....
>
> That further, there is also a provision for settlement of dispute under clause 25 "Dispute and Arbitration.

> That as per this clause, the matter can be decided by the Superintendent Engineer in case of any dispute and failing which the matter can be settled in appeal by the Hon'ble Chief Engineer. Further, there is a provision regarding action where no specifications are specified under clause 28.
>
> That our case falls under category 28 also, because the issue is open and both the parties are under confusion regarding the make of the goods. During our final meeting, we were under the impression that the goods equivalent to the Godrej can be supplied but as a matter of surprise now it has been observed by us that you are insisting for goods of Godrej make only which is not possible for us to be supplied at the quoted rates as our incidental charges are also involved. In that case order could have been placed directly by PWD on the Godrej and the question of going to open markets absolutely uncalled for as it is a monopoly item. The Government has provided for tenders to avoid monopoly in the system to meet statutory requirement.....
>
> That however, in case our contention is not found acceptable then we will request Hon'ble Chief Engineer to appoint a Sole Arbitrator in the matter as earliest as possible, though apparently there appears to be no justification because the contact has not been put in operation."

13. In reply to the petitioner's reply, respondents by communication dated 12.5.2006 intimated to the petitioner that the contentions raised by the petitioner in reply dated 11.5.2006 are not convincing and acceptable. The petitioner was asked to supply the revolving chairs of Godrej make only as stipulated in nomenclature of item No.42. By letter dated 19.5.2006 the petitioner communicated to the respondent that due to unavoidable circumstances he would be unable to submit the performance guarantee by 20.5.2006 and so another 10 days time for submission of performance guarantee without prejudice was sought. The petitioner did not communicate to the

respondents that he can not furnish performance guarantee as he can not supply `Godrej' chairs. Rather apprehending forfeiture of EMD and terming the letters dated 8.5.2006 and 12.5.2006 being arbitrary, unreasonable and irrational the present writ petition was filed.

14. The petitioner asserted that he has been asked to deposit performance guarantee without approval of samples and without sorting out discrepancies and that he has been threatened with forfeiture of EMD which is unlawful and in violation of the rights of the petitioner. According to the petitioner he fully met and satisfied the requirements of the terms and conditions of the tender and in the event of any difference or discrepancy in the description of any item or its specification same ought to have been resolved by the decision of the Engineer-in-charge and not as per the manual of CPWD.

15. The petitioner categorically pleaded that condition and specification attached to the tender document had preference over the provisions of CPWD Specification 1996 and the decision of the Engineer-in-Charge has to be followed for execution and plan of any item of work. Relying on list of approved make or material at serial No.19 it was contended that the word `or' in "Godrej or equivalent" is disjunctive article used to express an alternative and to give a choice of one among two or more things and consequently the petitioner was entitled to supply chairs equivalent to Godrej and not of `Godrej' only. According to the petitioner this was the nomenclature of the goods to be supplied and not the quantity mentioned at serial

No.42 in schedule of quantities which could not be given preference in case of discrepancy. According to the petitioner if `Godrej' make items were required then the order could be placed simplicitor on Godrej company itself. The petitioner contended that he had participated under the confidence that it could supply better quality of material at cheaper rates than Godrej and that may be of better quality even than Godrej.

16. The writ petition had come up for hearing on 26.5.2006 and the following order was passed by this Court:-

> CM No. 6916/2006
>
> Allowed, subject to all just exceptions.
> The Application stands disposed of.
>
> W.P.(C) 9327/2006
>
> Issue notice to the Respondents to show cause as to why rule nisi be not issued, returnable on 30.05.2006.
>
> Mr. J.R. Midha, Standing Counsel accepts notice on behalf of the Respondents.
>
> Counsel for the Respondent to explain why only Godrej Products are sought to be purchased by the Respondents, especially where detailed specifications have been notified by them and, therefore, the Respondents are in a position to inspect and accept quality products of other parties also. It is not controverted that the Petitioner's products do not conform to the said specifications.
>
> CM No. 6915/2006
>
> Issue notice to the Respondents for the date fixed.
>
> Mr. J.R. Midha, Standing Counsel accepts notice on behalf of the Respondents.
>
> No coercive step be taken till the next date of hearing."

17. The writ petition is contested by the respondents and a counter affidavit of Sh.Arab Singh, Executive Engineer (C), Civil Division-II, DCE(P), PWD, Bawana Road, Delhi dated 30.5.2006 was filed. In reply to the averments made by the petitioner and the query raised by the Court by this order dated 26.5.2006, the respondents pleaded that after receipt of sanction, samples of various furniture were shown to the Judge Incharge, Rohini Courts and other Judges at Rohini Courts. After inspection of various samples and discussions with PWD officers, various makes of Godrej revolving chairs in conference room, PP chamber, Canteen, Training room were approved and the approved samples were kept at site by the respondents and thereafter the tender was invited for providing `Godrej' revolving chairs as per approved samples along with other movable furniture. The respondents in their reply also contended as to why only `Godrej' furniture was choosen. The relevant portion of the reply of the respondents is as under:-

> "Respondent No.4 received sanction from District & Session Judge, Delhi for providing movable furniture in Judge's Library cum Lounges, Conference room, Canteen, Bar rooms, 3 Nos. branches in District Courts Rohini, Delhi vide order dated 16.2.2006. After receipt of sanction, samples of various furnitures were shown to Judge in Charge, Rohini and other Judges at Rohini. After inspection of various samples and discussions with PWD Officers, the Judge in Charge, Rohini approved various makes of Godrej revolving chairs in conference room, PP chamber, Canteen, Training room. These approved samples were kept at site by respondents. Respondent No.4 invited tenders for providing Godrej revolving chairs as per approved samples along with other movable furniture. Approved samples of Godrej chairs and other furniture were also shown to the interested tenderers."

18. The respondent categorically pleaded that the nomenclature of an item has to take precedence over all and in case of a dispute being not resolved with the help of tender documents and ISI codes, the decision and direction of the Engineer-in-Charge has to be followed for execution and completion of any item of work. Relying on General Condition of Contract, 2005 it was contended that discrepancies and adjustments of errors were to be resolved by having several documents forming the part of the contract as mutually explanatory to one another and detailed drawings being taken in preference to small scale drawings and figure dimensions in preference to scale and special conditions. The order of preference to be observed was as under:-

> "(i) Description of Schedule of Quantities
>
> (ii) Particular specification and special condition, if any.
>
> (iii) Drawings
>
> (iv) CPWD specifications
>
> (v) Indian Standard specification of BIS

19. Relying on para 8.2 it was contended that if there was varying or conflicting provisions, the accepting authority was the deciding authority in regard to the intention of the document and his decision was to be final and binding on the contractor.

20. On the basis of condition 1.5 at page 16 of tender document and para 8.1 at page 13 of General Conditions of Contract, 2005 it was asserted that both provisions stipulated that the details given in schedule of quantities would have precedence over

condition and specification attached with the tender documents and as description/nomenclature of item 42 of Schedule of Quantity clearly stipulated the particular make of `Godrej' chair any other description could not be taken in preference to whatsoever was given in nomenclature at item No.42.

21. According to the respondents, nine tenders were received and opened on 21.4.2006. The tender of the petitioner for supply of `Godrej' chairs was the lowest. The respondents categorically asserted that though the tender was for the supply of Godrej chairs and the petitioner had filed the tender for supply of `Godrej' chairs, however, later on after the petitioner mentioned equivalent chairs in the delivery challan and not `Godrej' chairs, the petitioner had given samples of equivalent chairs and he had made a request for the approval of his samples alleged to be equivalent to the `Godrej' chairs, however, the committee of Judges from District Courts, Rohini inspected the samples along with the PWD Officers and rejected the samples and the decision was communicated to the petitioner by the respondents vide letter dated 8.5.2006.

22. The respondents also pleaded that the petitioner did not give performance guarantee in terms of the agreement and sought extension of time on 20.5.2006 and again requested to extend the time for depositing the performance guarantees by 10 days. However as the respondent failed to give performance guarantee and also failed to supply the tender items, the respondents forfeited the earnest money on 25.5.2006 and sent the decision to the petitioner vide letter dated 25.5.2006 which

was posted by speed post on 26.5.2006.

23. The petitioner filed the rejoinder refuting the averments made by the respondents and contended that respondent was informed by the petitioner that he would submit the performance guarantee amounting to Rs.3,69,314/- only on approval of samples as sent by the petitioner. The rejection of samples submitted by the petitioner later was also denied. The petitioner also contended that on the first date of hearing of the writ petition on 26.5.2006 the department representative was present in the Court with the instruction and that the letter forfeiting the EMD was posted contemporaneously in order to abuse the process of the Court and the letter of forfeiture was dispatched after the hearing which was received by the petitioner on 29.5.2006.

24. An additional affidavit was filed by the respondents categorically contending that the case was attended by the respondents counsel on 26.5.2006 who had informed the Executive Engineer (Civil) that he had appeared and accepted the notice on behalf of the respondent and had sought time to take instructions. It was categorically stated that no representative of the respondents met the standing counsel on or before the date of hearing on 26.5.2006 nor had any representative of the respondent had attended the Court on 26.5.2006. According to the respondents the letter dated 25.5.2006 forfeiting the EMD was posed on 26.5.2006 prior to the information of the order of the Court not to take any coercive steps. The letter forfeiting the EMD was delivered to the petitioner on 27.5.2006. A copy of the

dispatch register was produced as well as a certificate issued by the postal department stipulating the date of delivery of the letter as 27.5.2006 which were also produced along with a photocopy of the receipt slip showing the signature for receipt of the said letter bearing item No.EE 204604617. A copy of the letter dated 25.5.2006 was also produced with the endorsement by the respondents on the same that since the petitioner has filed a writ petition no further action for forfeiture be taken till further direction on the matter and in view of the order passed by the Court and order of Executive Engineer be kept in abeyance till then.

25. The petitioner filed the response to the additional affidavit filed by the respondents and also produced the receipt slip of postal articles showing receipt of postal article bearing No.EE 204 604617 IM on 29.5.2006 with an endorsement without prejudice. The petitioner also relied on a notice inviting tender given by the respondents during the pendency of the writ petition stipulating that the tender be issued to various dealers of Godrej and Boyce manufacturing company only.

26. The respondents contended that the writ petition is barred under section 14 (1) and 41 (e) of the Specific Relief Act, 1963 and the petitioner is not entitled for specific performance of the agreement which is determinable in a writ petition. It was also contended that there is a valid arbitration agreement and the petitioner has an alternate remedy of Arbitration and the writ petition is not maintainable. The respondents relied on Indian oil Corporation ltd. Versus Amritsar Gas Service (1991)1 Supreme Court Cases 533; Percept D'Mark (India) Pvt. Ltd. Versus Zaheer

Khan and Another 2006(2) Arb LR 34 (SC); Bareilly Development Authority Versus Ajay Pal Singh AIR 1989 SC 1076; Kerala State Electricity board & Anr. versus Kurien E. Kalathil And Ors. JT 2000 (8) SC 167; National Textile Corporation Limited and Others Versus Haribox Swalram and ors. (2004) 9 Supreme Court Cases 786; State of Jammu and Kasmir Versus Ghulam Mohd. Dar and Anr AIR 2004 Supreme Court 510; State of UP and others Versus Ram Sukhi Devi (2005) 9 Supreme Court Cases 733; Libra Bus Service P. Ltd & Anr. Versus D.T.C 129(2006) Delhi Law Times 516; Ashok Kumar Chhabra Versus Govt of NCT of Delhi, 87(2000) Delhi Law Times 755; Sai Electrical Power Supply Pvt. Ltd Versus Delhi Electricity Regulatory Commission & Ors. 114(2004) Delhi Law Times 78 and Mrs. Sharda Nath Versus Delhi Administration & Ors. 65(1997) Delhi Law Times 351.

27. The petitioner, on the other hand contended that writ petition is maintainable as judicial review is permissible under Article 226 of the Constitution of India where the action of the State, though purely commercial in nature, is arbitrary and illegal. It was contended that the principle that a contract which is determinable can not be enforced, is applicable primarily to commercial contracts. The petitioner also contended that the matter can not be referred to Arbitration as there is no arbitration clause in tender document. The petitioner relied on Kumari Shrilekha Vidyarthyi and Others Versus State of U.P. and others (1991) 1 Supreme Court Cases 212; Style (Dress land) Versus Union Territory, Chandigarh (1999) 7 Supreme Court Cases 89; M/s Dwarkadas Marfatia and sons Versus Board of the Trustees of the Port of

Bombay (1989) 3 Supreme Court Cases 293; Harbans lal Sahnia and Another Versus Indian oil Corporation limited, ( 2003) 2 Supreme Court Cases 107; Mahabir Auto Stores and others Versus Indian oil Corporation & Ors, JT (1990) 1 Supreme Court 363; LIC of India & Anr. Versus Consumer Education & Research Centre & Ors. (1995)5 SCC 482; Verigamto Naveen Versus Govt. of A.P and Ors. (2001) 8 Supreme Court Cases 344; Gujarat State Financial Corporation Versus M/s Lotus Hotels Pvt. Limited, (1983)3 Supreme Court Cases 379; Union of India and Others Versus Dinesh Engineering Corporation and Another, (2001)8 Supreme Court Cases 491; Ashish Gupta Versus IBP Co. Ltd and Anr, 2005(85) DRJ 395; Atlas Interactive India Pvt. Ltd. Versus Bharat Sanchar Nigam limited, 126(2006) Delhi Law Times 504 and Pioneer publicity Corporation versus Delhi transport Corporation 2003(1) Arb. LR 672(Delhi) in support of his pleas and contentions.

28. I have perused the writ petition, counter affidavits and other affidavits filed by the parties and have heard their learned counsel in detail and has also considered the judgments and orders relied on by them.

29. What is the nomenclature of the item? Nomenclature has been defined as a system of norms assigned to objects or items in a particular science or art. It is also defined as a system of words used in a particular discipline; “legal terminology”; “the language of sociology”. The chair has been defined in general specification under clause 16. It states that the chair shall be a steel chair manufactured from approved manufacturer as per their specification and as approved by the Engineer-in-Charge.

The schedule of quantities as given in the tender categorically stipulates the manufacturer. The schedule of quantities also gives the other details and specifications of the chair of an approved manufacturer, `Godrej'. On receiving the tender form, the petitioner filled the schedule of quantities and in item No.42 categorically stipulated the price of `Godrej' chair and not of chairs equivalent to `Godrej' Chairs. While filling price in the schedule of quantities, the petitioner did not mention that the price quoted is of a chair equivalent of Godrej Chair and is not of Godrej chair. The tender of the petitioner was accepted by letter dated 28th April, 2006 and before the acceptance of the tender, the petitioner did not indicate in any manner that the prices quoted by him at item No.42 in the schedule of quantities were of chairs equivalent to Godrej chairs and not of `Godrej' chairs.

30. Relying on the dimensions given in specification for super premium chairs, the learned counsel for the petitioner has contended that the dimensions were given because the chair equivalent to the chair manufactured by Godrej could be supplied because if the chair was of the make "Godrej" and its model number was given then that would have been sufficient to procure a Godrej chair and there was no need to give any dimension. It has also been contended that if the chairs to be procured were only to be those manufactured by the Godrej Company, probably there was no need to have an open tender as in that case the chair should have been acquired from the Godrej Company.

31. The contention of the learned counsel for the petitioner is based on

assumption that chairs manufactured by Godrej Company can be sold only by the said company and only said company or its dealers could supply the Chairs of said company at the cheapest rate. The said company has dealers and distributors and also sells its products to any person or company. The discounts and other benefits are given by the company to distributors, dealers and other purchasers of large scale quantities and it is for the distributors, dealers or the purchasers of large scale quantities from the said company to decide to whom to sell the products of the company and at what price. This has not been established by the petitioner that the products of Godrej Company could be sold only at the prices fixed by the company. If that be so, it logically follows that even for purchasing the products manufactured by Godrej Company, an open tender could be given for purchasing from any of the persons or firms dealing with the `Godrej' products. A person or a firm may have stock of earlier purchased chairs at cheaper price which he may decide to sell at a price which may be cheaper than the price of the company manufacturing the product. The plea of the petitioner that if only `Godrej' chairs were to be acquired, then the chairs could be procured from the company only, is based on his own assumption and seems to be a justification for not supplying the `Godrej' chairs for which he had filled the tender and which was accepted. The plea raised by the petitioner is an after thought, after his tender for supply of `Godrej' chairs was accepted. The plea raised by the counsel for the petitioner that if Godrej products were to be purchased and the model number was given, then giving dimension reflects that other equivalent chairs could be supplied is also not acceptable in the facts and circumstances of this case. If the nomenclature of the furniture supplied is

clear and the name of the Manufacturer was also given and the petitioner himself quoted the rates of Godrej Chairs, then the petitioner plea that giving dimension with model number entitles him to supply equivalent chairs is nothing but an after thought and can not be permitted. The nomenclature of the items to be procured, a chair manufactured from approved manufacturer as per specification and approved by the Engineer-in-Charge and user, was given in the schedule of quantities along with the name of the approved manufacturer. The petitioner himself had filled the rates of the items to be supplied, categorically stipulating the prices of the chairs manufactured by Godrej. In the circumstances there is no element of ambiguity nor the petitioner can be allowed to raise the plea that along with the model number, the specifications of the chair were given, to get the supply of the chairs equivalent to the Godrej chairs. Such a plea is not an honest plea. This is also apparent from the fact that the petitioner had supplied the chairs equivalent to Godrej and the fact that he intended to supply the chairs equivalent to Godrej and not the Godrej chairs was mentioned for the first time in the delivery challan dated 29th April, 2006 and not before that. After filing the tender specifically mentioning the price of `Godrej' Chairs, the petitioner never intimated that he has quoted the rate of Godrej Chairs by mistakes but he intends to supply the Chairs manufactured by him or procured by him which are equivalent to the Godrej Chairs. There is nothing to disbelieve the plea of the respondents that after receipt of sanction, samples of various furnitures were shown to Judge in Charge, Rohini and other Judges at Rohini and after inspection of various samples and discussions with PWD Officers, the Judge in Charge, Rohini approved various makes of `Godrej' revolving chairs in conference room, PP chamber,

Canteen, Training room which approved samples were kept at site by respondents. It is more probable that the samples were kept after approval which were seen by the petitioner and that is why the petitioner quoted the rates of `Godrej' Chairs in the tender and not the rates of chairs equivalent to `Godrej' Chairs. The word `Godrej' in his tender has been used by the petitioner not just once or twice but a number of times. The probable inference in the facts and circumstances, considering the respective pleas, is that samples were shown and seen by the petitioner and he quoted the rates of `Godrej' chairs and later on for the reasons known to the petitioner, the plea has been raised about the confusion and being misled when the petitioner committed the breach of the terms of the contract by not supplying the chairs.

32. Even under the conditions of work, the nomenclature of the item has to take precedent over all and anything stated elsewhere. If the chair has been defined as a steel chair manufactured from the approved manufacturer as per the specifications and approved by the Engineer-in-Charge, the nomenclature, as given in the schedule of quantities giving the name of the approved manufacturer and the model number which was also approved by the Engineer-in-Charge which is specific shall take precedent over the general nomenclature. Had the nomenclature not given in the schedule of quantities, the plea raised by the petitioner may have been relevant but in view of specific nomenclature included in the schedule of quantities, the pleas raised by the petitioner are not sustainable and can not be accepted.

33. The petitioner himself in his letter dated 11th May, 2006 had admitted that he

was misled because in the nomenclature, it was mentioned only Godrej make. The stipulation made by the petitioner in the letter dated 11th May, 2006 is as under:-

> "Though in the nomenclature it was mentioned only Godrej make, since the nomenclature is a part of the contract and the most important portion is the approved lists so we are misled in the process. We have quoted only on account of our ability to compete in the system. The schedule of quantities categorically stipulates the model number of the Godrej chair and the number of the chairs of the make "Godrej" which were to be supplied."

Though the learned Senior Counsel Shri Kaul insisted that the entire letter dated 11th May, 2006 will give a different meaning to the admission made by the petitioner, but in my opinion, it is clear that after failure to supply the `Godrej' Chairs at the rates quoted by the petitioner, the plea has been raised that he had been misled merely with a view to justify his breaches and non supply of `Godrej' chairs for which the tender was filled by the petitioner and which was accepted. The plea of the petitioner that the both the parties were under confusion is also not sustainable. There was no confusion on the part of the respondents. Rather the petitioner has tried to take shelter under the plea of confusion in order to wriggle out of his contractual obligations. This is also born out from the fact that the petitioner had written that he was under impression that the goods equivalent to `Godrej' could be supplied. There is no rational for the petitioner to have such an impression, after quoting the rate of `Godrej' chairs for the goods mentioned in the schedule of quantity as Godrej chairs.

34. The petitioner filled the tender giving the prices of the chairs in the schedule of quantities and nowhere indicated that he would be supplying his own chairs which are alleged to be equivalent to the chairs of the make "Godrej". The tender of the

petitioner had been accepted on his specific stipulation that he would be supplying the chairs of make "Godrej" at the price quoted by him and not equivalent chairs. Prior to acceptance of the tender of the petitioner, it was not indicated in any manner by him that he would be supplying chairs equivalent to Godrej and not of make 'Godrej' and he had been misled or there was any confusion. If the samples were shown to the petitioner and other tenderer, their could not be any confusion and the alleged confusion and being misled has been resorted to by the petitioner to wriggle out of his contractual obligations. The petitioner had been seeking time to furnish performance guarantee and even at that time, he did not contend that he would be supplying chairs equivalent to `Godrej' and not `Godrej' chairs. The petitioner could not seek modification of the term of the tender to furnish the performance guarantee and could not insist that the performance guarantee would be given by him on approval of his sample. After taking part in the process of tender for supply of `Godrej' Chairs which were approved by the users, and after acceptance of his tender for the supply of the `Godrej' chairs, the petitioner could not raise the dispute that the respondents are liable to accept the chairs which are equivalent to the Godrej Chairs and which are also the quality products. The tender was specific about the supply of various models of `Godrej' chairs. The petitioner did not challenge the tender at that time contending that since his products are equally good, the respondents can not restrict the purchase of chairs of make `Godrej' only.

35. The learned counsel for the petitioner has also emphasized that by an interim order dated 26th May, 2006, the respondents were directed to explain why only

Godrej products were sought to be purchased especially when detailed specifications had been notified by them and this plea raised by the Court has not been answered by the respondents. Perusal of the pleas and contentions raised by the respondents it is apparent that this plea of the petitioner that the respondents have not answered the plea raised is not correct.

36. It has been categorically contended that the respondent No.4 had received the sanction from the District and Sessions Judge, Delhi, for providing movable furniture in Judges' Library-cum-Lounge, Conference Room, canteen, Bar Room. After the receipt of the sanction, the samples of various furniture were shown to the Judge-in-Charge and after inspection of various samples and discussions with PWD Officers, the Judge-in-Charge approved various makes of `Godrej' revolving chairs in the Conference Room, PP Chamber, Canteen and these approved samples were kept at site by the respondents and after perusing various samples of chairs, it was decided that the respondent had to purchase the Godrej chairs. The petitioner after quoting the rate of the Godrej chairs cannot turn back and contend that the chairs equivalent to Godrej chairs should also have been considered and purchased by the respondent. If the petitioner was aggrieved by the decision of respondents to float the tender only for the purchase of the chairs of make “Godrej” on the ground that his chairs were superior on account of gauge of steel used, make of steel and finishing process of the chair and the tender could not be restricted only to the chairs of the make `Godrej' as detailed in the schedule of quantities, the petitioner ought to have challenged the tender issued only for the purchase of chairs of make `Godrej' and not after

participating in the tender, quoting price of the chairs of make 'Godrej" and after the acceptance of his tender for the supply of the chairs of make `Godrej' and after seeking extension of time to furnish performance guarantee. The inevitable inference in the circumstances is that the tender was for the purchase of chairs of make `Godrej' and the petitioner categorically quoted the rates of chairs of make `Godrej' and the tender was not for the chairs equivalent to chairs of make`Godrej'.

37. The learned counsel for the petitioner has also emphasized on the basis of a photocopy of the extract of the postal department showing that a postal article which was booked on 26th May, 2006 was received `without prejudice' by the petitioner on 29th May, 2006 whereas the respondents have produced another photocopy of Speed Post Center, New Delhi, showing that the article which was booked on 26th May, 2006 was delivered on 27th May, 2006. The counsel contended that the respondent have manipulated the report from the postal department. The postal article in respect of which the photocopy of the extract of the postal department has been produced by the respondent bears No.EE-222215278IN/SPA whereas the extract of postal department which has been produced by the petitioner is in respect of EE-204604617IN/SPA. It is thus apparent that contradiction about the date of receipt is on account of postal articles being different. In any case, the emphasis made by the counsel for the petitioner, Mr.Kaul, is not relevant as what is relevant is as to when the letter dated 25th May, 2006 seeking forfeiture of EMD on account of non submission of performance guarantee despite maximum time given by the respondents, was posted. From the documents produced, it cannot be disputed that

the said letter was posted on 26th May, 2006. There is nothing on record to show that the said letter was posted after the order dated 26th May, 2006 was passed by the court directing the respondents not to take any coercive steps till the next date of hearing. The copy of the letter produced by the respondents rather has an endorsement dated 29th May, 2006 stipulating that no further action for forfeiture of EMD be taken till further directions on the matter is issued by the court. Consequently, on the basis of the said plea of the petitioner he is not entitled for any relief against respondents.

38. Considering the various judgments relied on by the respondents and petitioner about the maintainability of the writ petition, what emerges is as under. In Indian oil Corporation Ltd. (supra) relied on by the respondents, the distributorship contract was terminated by the appellant, a State instrumentality. The distributor therefore, had sought relief against breach of contract and the remedies flowing there from. The matter was referred to arbitration and an award was rendered by the arbitrator on that basis alone. In these circumstances, it was held by the Supreme Court that the suit was based on breach of contract and the arbitral award was passed on that basis alone. Therefore the questions of public law based on Article 14 of the Constitution had not arise for decision and it was held that the matter was to be decided in the realm of private law rights governed by the general law relating to contracts with reference to the provisions of the Specific relief act. In Percept D'Mark (India) Pvt. Ltd. (supra) relied on by the respondents a promotion agreement was entered into between the respondent no.1 and the appellant which had a negative covenant. Enforcement of negative covenant was sought by the appellant even beyond the term

of the agreement. In these circumstances, the Apex Court had held that no case was made out by the appellants for compelling respondent no. 1 to appoint the appellant as his agent in perpetuity. In view of the personal nature of the service and relationship between the contracting parties, a contract for agency /management such as the one entered into between the appellants and respondent, it was held will be incapable of specific performance and to enforce the performance thereof would be inequitable. The Supreme Court had held that a negative covenant can be operative during the term of the agreement. But if it sought to be enforced beyond the term of the agreement, then it constitutes unlawful restriction on the respondent no. 1's freedom to enter into fiduciary relationship with the persons of his choice and the same will be void under section 27 of the Indian Contract Act, 1872. The facts of present case are apparently distinguishable.

39. In Bareilly Development Authority versus Ajay Pal Singh, AIR 1989 SC 1076, the respondents had challenged the subsequent increase in the price of the houses, amount of installment and interest after the registration for allotment was done by the appellants. The prices were increased in terms of the conditions clearly stipulated in the brochure issued by the appellants. In these facts and circumstances, it was held by the Supreme Court that there was no fraudulent concealment of the information in the brochure and the respondents had voluntarily accepted the terms imposed thereby entering into the realm of concluded contract with the petitioner and could not claim the right conferred upon them by the said contract unless the statute

steps in and confers some special statutory obligations on the part petitioner in the contractual field. It was further held that when the State enters into a contract which is non statutory and purely contractual then the rights of the parties inter se are governed by the terms of the contract and not by the provisions of the Constitution and the parties can only claim rights conferred upon them by the contract and that no writ or order can be issued under Article 226 of the Constitution to compel an authority to remedy a breach of contract pure and simple. In Kerala State Electricity board & Anr. versus Kurien E. Kalathil And Ors. JT 2000 (8) SC 167 it was held by the Apex Court that the interpretation and implementation of a clause in a contract cannot be a subject matter of a writ petition which is a matter for adjudication by the civil court or in arbitration if provided under the contract and if the terms of a contract is violated, ordinarily the remedy is not a writ petition under Article 226 of the Constitution. The Supreme Court had further held that every act of a statutory body need not necessarily involve exercise of statutory power and a contract will not become statutory merely because it is for construction of a public utility and it has been awarded by a statutory body. Dispute arising out of the terms of a non statutory contract falls in the realm of private law and have to be settled by the ordinary principles of law of contract and just because one of the parties is an statutory body will not of itself affect the principles to be applied.

40. In National Textile Corporation Limited and Others Versus Haribox Swalram and ors. (2004) 9 Supreme Court Cases 786, it was held that in order that a mandamus can be issued to compel authorities to do something, it must be shown

that a statute imposes a legal duty and the aggrieved party has a legal right under the statute to enforce its performance. In this case prayer was seeking issuance of mandamus to the appellants for supply of goods which was rejected on the ground that it was a case of pure and simple business contract. In the matter of State of Jammu and Kashmir Versus Ghulam Mohd. Dar and Anr (supra) the respondents had sought a direction for payment of 42% escalation rates in respect of certain items as approved under the Supplementary agreement and in these circumstances it was held that a writ of mandamus cannot be issued for enforcement of terms and conditions of the contract qua contract and it can be issued only when a question involving public law character comes up for consideration. The Apex Court had held that High Court should not entertain Writ petition involving disputed Questions of fact. Similarly in the State of UP and others Versus Ram Sukhi Devi (supra) relied on by the respondents, it was held that whether the writ petitioner was entitled to any relief in the writ petition has to be adjudicated at the time of final disposal of the writ petition and the final relief sought in the writ petition can not be granted at an interim stage just because a prima facie case has been made out without taking into consideration the balance of convenience, public interest and host of other factors. In Libra Bus Service P. Ltd & Anr. Versus D.T.C 129(2006) Delhi Law Times 516 the petitioner had challenged the cancellation of the contract for plying buses on inter state routes on account of losses by the respondent on the ground that it was a fixed term contract. This Court had held that the writ petition was not maintainable for purposes of enforcement of the terms of a contract. In Ashok Kumar Chhabra Versus Govt of NCT of Delhi, 87(2000) Delhi Law Times 755 relied on by the respondents,

the petition sought quashing of letter of termination as also for restraint on withholding other payment for recovery of earnest money. This writ petition was dismissed on the ground that the Writ petition was not maintainable when the relief sought were based on the enforcement of contractual rights. Similarly in Sai Electrical Power Supply Pvt. Ltd Versus Delhi Electricity Regulatory Commission & Ors. 114(2004) Delhi Law Times 78 this Court had held that writ court is not a proper forum for adjudication of the rights and obligations arising out of the contract executed between the parties. In Mrs. Sharda Nath Versus Delhi Administration & Ors. 65(1997) Delhi Law Times 351 this Court had held that if there is an arbitration clause for the settlement of the disputes and the parties have agreed to incorporate such a clause with their eyes wide open, in that eventuality, in case of a dispute the Court should decline to interfere and the remedy of the parties is by way of arbitration.

41. Per contra the reliance has been placed by the petitioner on Kumari Shrilekha Vidyarthyi and Others Versus State of U.P. and others, (1991) 1 Supreme Court Cases 212 in which the Government of State of the Uttar Pradesh had terminated by a general order the appointments of all Government counsel in all the districts of the States of U.P and directed preparation of fresh panels to make appointments in place of the present incumbents. The validity of this order was challenged by the petitioners. In these circumstances the Apex Court had held that if there is a contract of the state with the private party, then in some circumstances the State's action is amenable to judicial review to determine violation of Article 14 irrespective of the

scope of review in this sphere. The Supreme Court had held that State's constitutional obligation coexists with the contractual obligation and the State acts for public good and in public interest and its public character is not changed merely because statutory or contractual rights are also available to the other party. It was further held that in States' contractual actions, public element is always present so as to attract Article 14 of the constitution of India. There was a sharp increase in the rent of the leased commercial premises (shops) by the respondents which was challenged by the petitioner on the ground that the power has been unfairly and arbitrarily exercised in the case of Style (Dress land) Versus Union Territory, Chandigarh (supra). In these circumstances it was observed by the Supreme Court that the Government cannot act like a private individual in imposing the conditions solely with the object of extracting profit from the lessees. It was further held that the Governmental actions are to be based on standards which are not arbitrary or unauthorized and non-arbitrariness, being a necessary concomitant of the rule of law, it is imperative that all the actions of every public functionary in whatever sphere must be guided by reason and not humour, whim, caprice or personal predilections of the persons entrusted with the task on behalf of the State and exercise of all powers must be for public good instead of being an abuse of power. The State action which is not informed by reason cannot be protected as it would be easy for citizens to question such an action as being arbitrary and in such circumstance it was held that under Article 226 of the Constitution of India the contractual transactions of a public body are covered. In another judgment relied on by the respondent being M/s Dwarkadas Marfatia and sons (supra), the eviction proceeding were initiated by the

Port Trust terminating the appellants contractual tenancy which was challenged on the ground that it had a public law character and hence subject to Judicial Review. The Supreme Court had held that all the actions including contractual dealings of the State are subject to judicial review and that the Court can examine whether the body has followed the statutory purpose and acted in public interest and not in malafide or arbitrary manner or for a collateral purpose. In Harbans lal Sahnia and Another Versus Indian oil Corporation limited (supra) it was held by the Apex Court that in some contingencies the High Court could exercise writ jurisdiction inspite of availability of alternative remedy and three contingencies were laid down by the Court:-

(i) where the writ petition seeks enforcement of Fundamental Rights;

(ii) where there is failure of principles of natural justice; or

(iii) where the orders or proceedings are wholly without jurisdiction or the vires of an Act is challenged.

In this case termination of petitioners' dealership of petroleum products was challenged on the ground that the sample taken from the appellants outlet were not as per the specifications. The apex court quashed the order terminating dealership since the sample test was carried out in violation of the instructions contained in the Governments orders and hence the failure of the sample taken from the appellants' outlet became an irrelevant and non-existent fact which could not have been relied on for canceling the appellants' license. Similarly in Mahabir Auto Stores and others Versus Indian oil Corporation & Ors. (supra) there was discontinuance of supply of

lubricants to the appellants who had been selling the product for over 18 years by the respondents without informing the appellants. The Apex Court had held that actions uninformed by reason may be questioned as arbitrary in the proceedings under Article 226 of the Constitution of India.

42. In another judgment relied on by the petitioner, LIC of India & Anr. Versus Consumer Education & Research Centre & Ors, (1995)5 SCC 482, the appellants had sought policies under Table 58 which request was turned down by the respondents. The respondents then had challenged the decision of HC upholding the prescription of policy under table 58 on the ground that the writ petition as filed was not maintainable as the HC was not justified in interfering with the matters based on economic criteria and commercial contracts. In these circumstances, the Apex Court had held that even if the State/Instrumentality /Authority enters into a contract with private persons and the writ petition is filed by contracting private parties challenging the terms of contract as being arbitrary, unjust and unfair, then the writ petition will be maintainable. It was observed that it should be no answer for the State that its Instrumentality, public authority or persons whose acts have the insignia of public element to say that their actions are in the field of private law and that they are free to prescribe any condition or limitations in their actions as private citizens simplicitor do in the field of private law. The Supreme Court had held that actions of public authority must be based on rational and relevant principles and that the court has the power to mould the relief appropriately to remedy injustice. In Verigamto Naveen Versus Govt. of A.P and Ors. (2001) 8 Supreme Court Cases 344 there was illegal

termination of sub lease by the state government which power was vested on the Central Government under section 4 A of the Mines and minerals (Regulation and Development) Act, 1957. In these circumstances it was held by the Apex Court that interference by Court under Art. 226 of the Constitution of India in contractual matters is permissible where breach of contract involves breach of statutory obligation and the order complained of has been made in exercise of statutory power by an statutory authority. There was arbitrary refusal to grant sanctioned loan by State Financial Corporation to an entrepreneur who incurred expenditures and liabilities acting on the basis of the sanction in the matter of Gujarat State Financial Corporation Versus M/s Lotus Hotels Pvt. Limited (supra). It was held by the Apex Court that writ petition under Art. 226 will be maintainable against a Government undertaking as there was arbitrary refusal to grant sanctioned loan by State Financial Corporation. In Union of India and Others Versus Dinesh Engineering Corporation and Another (supra) relied on by the petitioner, tender was submitted by the petitioner for supply of spare parts, which was rejected without taking into consideration that the writ petitioner were supplying spare parts for a period of 17 years, on the ground that a new policy has been adopted by the railway administration and that they possessed the power to reject the application without assigning any reason. The Supreme Court in these circumstances had held that any decision, be it simple administrative decision or a policy decision, if taken without considering the relevant facts, can only be termed as an arbitrary decision and violative of the mandate of Article 14 of the Constitution and that if the power has been vested then the same should be exercised within the realm of the object for which the enabling

clause has been incorporated. In Ashish Gupta Versus IBP Co. Ltd and Anr (supra) where dealership was terminated without affording any opportunity of hearing and bypassing the remedy of arbitration for redressal of grievances as provided under the contract and where the maintainability of the writ petition was challenged on the ground that the dispute fell within the realm of private contract and that there was an arbitration clause in the agreement, this Court had quashed the impugned order holding that the order was unreasonable as the Principles of Natural Justice had been ignored and had issued the writ. In Atlas Interactive India Pvt. Ltd. Versus Bharat Sanchar Nigam Limited (supra) franchisee agreement entered into for providing Broad Band services had contained an arbitration clause signed by the parties. This Court had held that under section 9 of the Arbitration and Conciliation Act, 1996 the court was not in a position to order specific performance of contract as it can be ordered by the arbitral tribunal only. This Court had held that the court can only restrain respondent no.1 from terminating the agreement till the Arbitral Tribunal adjudicates the controversies. In Pioneer publicity Corporation Versus Delhi transport Corporation (supra) the termination clause was invoked by Delhi Transport Corporation. Since DTC was not able to adequately justify its action of terminating the contract before the time it was otherwise determinable, this Court had restrained DTC from taking down or defacing advertisements observing that where the power to terminate the contract is to be employed, the same should be founded on good and expressed reasons and should be unbiased.

43. It is also no more res integra that a decision is only an authority for what it actually decides. What is of the essence in a decision is its ratio and not every observation found therein nor what logically follows from the various observations made in it. The ratio of any decision must be understood in the background of the facts of that case. It has been said long time ago that a case is only an authority for what it actually decides, and not what logically follows from it. It is well settled that a little difference in facts or additional facts may make a lot of difference in the precedential value of a decision. The Supreme Court in Bharat Petroleum Corporation Ltd and Anr. v. N.R.-Vairamani and Anr., AIR 2004 SC 778 had observed:-

> " Court should not place reliance on decisions without discussing as to how the factual situation fits in with the fact situation of the decision on which reliance is placed. Observations of Courts are neither to be read as Euclid's theorems nor as provisions of the statute and that too taken out of their context. These observations must be read in the context in which they appear to have been stated. Judgments of Courts are not to be construed as statutes. To interpret words, phrases and provisions of a statute, it may become necessary for judges to embark into lengthy discussions but the discussion is meant to explain and not to define. Judges interpret statutes, they do not interpret judgments. They interpret words of statutes; their words are not to be interpreted as statutes.

A case is only an authority for what it decides. As observed by the Supreme Court in State of Orissa v. Sudhansu Sekhar Misra MANU/SC/0047/1967:-

> "A decision is only an authority for what it actually decides. What is of the essence in a decision is its ratio and not every observation found therein nor what logically follows from the various observations made in it. On this topic this is what Earl of Halsbury,LC said in Quinn v. Leathem, 1901 AC 495:
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> > "Now before discussing the case of Allen v. Flood (1898) AC 1 and what was decided therein, there are two observations of a general character which I wish to make, and one is to repeat what I have very often said before, that every

> judgment must be read as applicable to the particular facts proved, or assumed to be proved, since the generality of the expressions which may be found there are not intended to be expositions of the whole law, but governed and qualified by the particular facts of the case in which such expressions are to be found. The other is that a case is only an authority for what it actually decides. I entirely deny that it can be quoted for a proposition that may seem to follow logically Page 2009 from it. Such a mode of reasoning assumes that the law is necessarily a logical Code, whereas every lawyer must acknowledge that the law is not always logical at all."

In Ambica Quarry Works v. State of Gujarat and Ors. MANU/SC/0049/1986 the Supreme Court observed:-

> "The ratio of any decision must be understood in the background of the facts of that case. It has been said long time ago that a case is only an authority for what it actually decides, and not what logically follows from it."

Similarly in Bhavnagar University v. Palitana Sugar Mills Pvt Ltd (2003) 2 SC 111 (vide para 59), the Supreme observed:-

> " It is well settled that a little difference in facts or additional facts may make a lot of difference in the precedential value of a decision."

44. Circumstantial flexibility, one additional or different fact may make a world of difference between conclusions in two cases. Disposal of cases by blindly placing reliance on a decision is not proper and appropriate. The following words of Lord Denning in the matter of applying precedents have become locus classicus:

> "Each case depends on its own facts and a close similarity between one case and anr. is not enough because even a single

> significant detail may alter the entire aspect, in deciding such cases, one should avoid the temptation to decide cases (as said by Cordozo) by matching the colour of one case against the colour of Anr.. To decide therefore, on which side of the line a case falls, the broad resemblance to Anr. case is not at all decisive."

45. Precedent should be followed only so far as it marks the path of justice, but one must cut the dead wood and trim off the side branches, else one will find oneself lost in thickets and branches, yet some of the precedents relied on by the parties require consideration and have been considered. In view of this it is apparent that most of the decision relied on by the parties may not be strictly relevant for the purpose of decision of the disputes involved in this mater.

46. This is admitted by the petitioner that he had been misled in the process though in the schedule of quantities in the tender he categorically mentioned the word 'Godrej' a number of times and quoted the rates of Godrej chairs. If the petitioner himself was misled and after filling the tender and its acceptance, if modification of terms of the tender was sought by the petitioner by giving different samples which were not approved, non approval of the samples given by the petitioner contrary to the terms of contract, cannot be termed arbitrary or illegal or concealment of information by the respondents or a breach of contract on the part of the respondents. The letter forfeiting EMD of the petitioner dated 25th May, 2006 was posted on 26th May, 2006 and had been received by the petitioner. He had been given extended maximum time of seven days for depositing the performance guarantee. Within the stipulated/extended time the petitioner failed to give performance guarantee and

therefore, the earnest money deposited by the petitioner was liable to be forfeited and such a forfeiture cannot be termed illegal and arbitrary in the present facts and circumstances.

47. By the present writ petition, the petitioner is not seeking enforcement of his fundamental rights nor there is failure of principle of natural justice in the facts and circumstances nor the order passed by the respondents forfeiting his EMD by letter dated 25th May, 2006 on his failure to give the performance guarantee even after giving him maximum extended period, be termed wholly without jurisdiction or suffering from such an illegality for which the writ jurisdiction is to be invoked by this Court. The actions of the respondents in the present facts and circumstances cannot be held to be based on whims, caprice or personal predilection of the officials or the same being not for public good and an abuse of power. From the details as detailed hereinabove, it is difficult to infer that the action taken by the respondents in forfeiting EMD of the petitioner for not submitting the performance guarantee is not based on reasons. Apparently, the facts of the present case of the petitioner are clearly distinguishable from the ratio of Kumari Srilekha Vidyarthi & Other (supra) and style "dress land" (supra) relied on by the petitioner. The forfeiture of the EMD of the petitioner is not with the objective of extracting unlawful profits from the petitioner nor it can be termed malafide or arbitrary in any manner. Similarly, the ratio of other cases relied on by the petitioner are also clearly distinguishable.

48. There is no fraudulent concealment of any information by the respondents and

the petitioner had voluntarily accepted the terms of the tender to supply the chairs of the make 'Godrej' and later on, the petitioner could not contend that he was misled and in the circumstances chairs equivalent to the chairs of the make 'Godrej' be accepted. The petitioner had entered into the contract with open eyes as in the schedule of quantities the detailed description of various models of chairs of the make 'Godrej' was given and even the name of the manufacturer 'Godrej' was categorically stipulated not at one place but at number of places with every product and the petitioner had quoted the rates of the chairs of the make 'Godrej' and, therefore, it cannot even be accepted that the petitioner was misled. Such a contract as in the present case cannot be termed statutory as the disputes between the petitioner and the respondent is purely contractual and an attempt has been made by the petitioner to justify the breach committed by him and such a breach by the petitioner cannot be rectified by the explanation given. On non supply the material of tender recession of the agreement can not be termed illegal and unlawful nor the petitioner is entitled for directions to the respondents to recall the tender and direct the respondents to issue fresh tender and allow the petitioner to participate in the same in the present facts and circumstances of the case. The petitioner is not entitled for any of the relief sought in the present writ petition.

49. In any case as was held by the Apex Court in Kerala State Electricity Board and Another (supra) that the interpretation and implementation of a clause in a contract cannot be a subject matter of a writ petition which is a matter for adjudication by the civil court. The petitioner is trying to contend that the

nomenclature of the article was `Godrej or equivalent chairs' and not Godrej chairs only and, in the circumstances, it is difficult to infer that the writ petition, in the facts and circumstances, for the relief claimed by the petitioner is maintainable. There is no statute to compel the respondents that they must purchase the chairs equivalent to Godrej nor the petitioner has such a legal right that the respondent must purchase the chairs of the petitioner which are not of make Godrej but as alleged by him equivalent to the quality of the chairs of the make Godrej. The disputes raised by the petitioner do not involve question involving public law character and a writ petition will not be maintainable for the purpose of avoiding the consequences of breach of such a contract by the petitioner. As has already been held in various cases, as detailed hereinabove, that the writ court is not a proper forum for adjudication of the rights and obligations arising out of the contract executed between the parties, consequently the petitioner also can not avoid the consequences of breach of contract committed by him by not supplying the tendered article in the present facts and circumstances. There are no questions of law based on Article 14 of the Constitution of India and, consequently, if there are any breaches, the same have to be decided in the realm of private law governed by the general law relating to the contracts with reference to the provisions of Specific Relief Act or any other Act. Whether the relief claimed by the petitioner are barred under section 14 (1) and 41 (e) of the Specific Relief Act, 1963 and the petitioner is not entitled for specific performance of the agreement which is determinable, will be decided in case any civil remedies will be invoked by the parties. Similarly whether there is a binding and valid arbitration agreement, the same is to be finally adjudicated in such proceedings as may be

initiated by the parties. Consequently, there is no merit in the writ petition and it is not maintainable and, therefore, the writ petition merits dismissal.

50 Considering the facts and in totality of the circumstances, the writ petition is dismissed as not maintainable. The interim order dated 26th May, 2006 directing the respondents not to take any coercive steps against the petitioner is vacated. Considering the facts and circumstances the petitioner will be liable to pay a cost of Rs.10,000/- to the respondents.

February 20, 2007 **ANIL KUMAR J.**
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